IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

C. R. A. NO. 500 OF 2003

Arvind Dattatray Ingavale . .... Petitioner
VS.
Sakharam Ramu Kurane and anr. ... Respondents

Smt. Varsha Palav for Babasaheb Ghorpade for petitioner
Mr. S. D. Dharmadhikari for respondents 1 and 2.

CORAM: D. G. KARNIK **J.**

DATE: 28th September 2006

P.C.:

1. Heard learned counsel for the parties.
2. This revision application is directed against the order dated 23rd July 2003 passed by the 4th Additional District Judge, Kolhapur in Misc. application No. 241 of 1999 condoning the delay in filing of the appeal.
3. The petitioner had filed a suit against the respondent, bearing Regular Civil Suit No. 370 of 1990, for recovery of money. The respondent initially appeared in the suit but, did not file the written statement. Thereafter the suit was heard ex parte and money decree was passed against the respondent on 27th April 1993. As the respondent did not pay the money the petitioner took up the decree in execution. On

receipt of the notice of the execution proceedings the respondent filed an appeal against the ex parte decree along with an application for condonation of delay. He contended that he was not aware of the ex parte decree and therefore could not file the appeal in time. The explanations given by the respondent was accepted and by order dated 23rd July 2003 the District court, Kolhapur condoned the delay in filing of the appeal. That order is impugned in this revision application.

4. Learned counsel for the petitioner submitted that the respondent has not given sufficient reasons in his application for condonation of delay. There is only a vague averment that the respondent was not aware of the decree passed. The explanation was too vague and therefore the learned District judge erred in accepting the explanation and allowing the application for condonation of delay.

5. The jurisdiction of the court in hearing a revision application under section 115 of the Civil Procedure Code is limited. A revision application can be entertained only if the court below exercises the jurisdiction not vested in it or fails to exercise the jurisdiction vested in it or exercises the jurisdiction illegally or with material irregularity. The court below has exercised the jurisdiction vested in it. No material irregularity is shown in exercise of the jurisdiction. The view taken by the District court in condoning the delay is a possible view. The finding of fact that there was sufficient

cause and the delay was sufficiently explained cannot be set aside in exercise of revisional jurisdiction by this court as there is no perversity in the said finding.

6. It is true that the delay was gross , of more than 2000 days. The learned District Judge therefore erred in granting a paltry amount of costs. The costs should have been substantial. Learned counsel for the respondent submits that this court may impose sufficient cause on the respondent. The submission is accepted. For the above reasons the revision application is partly allowed. The order for condonation of delay is maintained. However, the respondent shall pay costs of Rs.5000/- to the petitioner within a period of 8 weeks. Payment of costs is made a condition precedent. If the costs are not paid within 8 days, the delay condonation application shall stand dismissed.

(D.G. KARNIK J.)